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MONTANA LEGISLATIVE HISTORY

Chapter 514 19 89

Bill H 682 S _____ Original bill & history ___C

H. Committee on Human Services + Aging			S. Committee on Local Government		
Hearing Date(s)	Feb 15	✓ C	Hearing Date(s)	Mar 16	✓ C
		C		Mar 21	✓ C
		C		Mar 22	✓ C
		C			C
Date Out	Feb 16	✓ C		Mar 22	✓ C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

2/14	REFERRED TO RULES		
2/15	FISCAL NOTE REQUESTED		
2/16	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/21	FISCAL NOTE PRINTED		
	DIED IN COMMITTEE		

HB 682 INTRODUCED BY O'KEEFE, ET AL.
ELECT TENANT AS HOUSING AUTHORITY COMMISSIONER

2/14	INTRODUCED		
2/14	REFERRED TO HUMAN SERVICES & AGING		
2/15	HEARING		
2/16	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	92	5
2/21	3RD READING PASSED	78	21
	TRANSMITTED TO SENATE		
2/28	REFERRED TO LOCAL GOVERNMENT		
3/16	HEARING		
3/23	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	26	19
3/29	3RD READING CONCURRED	34	15
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS CONCURRED	92	0
4/01	3RD READING AMENDMENTS CONCURRED	90	3
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 514 EFFECTIVE DATE: 10/01/89		

HB 683 INTRODUCED BY MARKS, ET AL.
REVISE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT
BY REQUEST OF GOVERNOR

2/14	INTRODUCED		
2/14	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
2/16	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/18	COMMITTEE REPORT--BILL PASSED		
2/18	FISCAL NOTE PRINTED		
2/20	2ND READING PASSED	96	0
2/21	3RD READING PASSED	98	0
	TRANSMITTED TO SENATE		
2/28	REFERRED TO FINANCE & CLAIMS		
3/01	REREFERRED TO BUSINESS & INDUSTRY		
3/10	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED		
3/11	2ND READING CONCURRED	34	7
3/14	3RD READING CONCURRED	46	3
	RETURNED TO HOUSE		
3/18	SIGNED BY SPEAKER		
3/20	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		

nursing home care.

John M. DenHerder stated that there now two nursing homes in Florida for the veterans. There is about an 800 million dollar shortfall going through the Veterans' Administration presently.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None

Closing by Sponsor: Rep. Pavlovich closes on the bill.

HEARING ON HB 682

Presentation and Opening Statement by Sponsor:

Rep. O'Keefe stated that this bill was an act providing for the election of two tenants of each housing authority as housing authority commissioners. Exhibit 1.

Testifying Proponents and Who They Represent:

John Ortwein, Montana Catholic Conference
Lisa Zier, Helena Housing Authority
Rep. Susan Good
Janet Berley
Donna Day, Concerned Citizens Coalition
Robert Dozier, Northern Plains Resource Council
Brenda Nordland, Montana Women's Lobby
Joseph Moore, Montana Rainbow Coalition
Hugh Standley, Low Income Group for Human Treatment
Gene Fenderson, Helena Housing Board
Don Judge, AFL-CIO
Jim Smith, Human Resource Council
Virginia Jellison, Montana Low Income Coalition
Marcia Schraeder, Montanan's For Social Justice
Rep. Angela Russell

Proponent Testimony:

John Ortwein stated that public policy must give direction and set basic criteria that will establish a commitment to descent housing. Encouragement of wide participation of tenants, community groups and consumers in the housing decisions that affect their communities directly.

Lisa Zier stated that tenants would have better communications with the Housing Authority. Insuring that the tenants have seats through an election process would take the politics out of the tenants representation through an election.

Rep. Susan Good stated that she supported this bill.

Janet Berley stated that if this legislation is passed it would mean that tenants would have a stronger voice in making decisions that affect our lives.

Donna Day stated that it was important that the opinions and the needs of the residents are heard and that they have a voice in the laws that affect them and the lives of their families and neighbors. Exhibit 2.

Bob Dozier supports this legislation and as a citizen legislature one realizes that you have insight into problems just because so many of the members are involved in those various problems back home.

Brenda Nordlund stated that this bill empowers tenants by giving them input and access in housing decisions that affect their lives.

Joseph Moore stated that this bill was in the best interests of the people who reside in public housing and urge a do pass.

Hugh Stanley supports this bill.

Gene Fenderson stated that he believed that the participation of tenants in running the housing boards will not only give them a voice but make us look at the problems that are facing the people that are in need of this housing and their input into that process.

Don Judge stated that he supports this bill and that the trade union across the state operates on the basic principles of democracy and on free and fair elections for governing the conditions under which we work.

Jim Smith stated that the Human Resource Council has over the last 20 years had low income people represented in force on their boards of directors.

Virginia Jellison supports this bill and supplied Exhibit 3.

Marcia Schraeder knows of the importance of management/tenant relationships. Working with the local housing commission she feels she knows a great deal about management concerns.

Rep. Angela Russell stated her support of this bill.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: Rep. Simon asked Rep. O'Keefe about the 18 year of age factor for the commission and has lived in the housing for at least 30 days. Mr. O'Keefe referred the question to Mr. Sinclair who stated that that was their policy and that a person had better judgment after the age of 18.

Closing by Sponsor: Rep. O'Keefe closes on the bill.

HEARING ON HB 653

Presentation and Opening Statement by Sponsor:

Rep. Harper stated that this bill was an act allowing a court to sentence a person to up to 2 years of supervised treatment for sex offenders.

Testifying Proponents and Who They Represent:

John Madsen
Judith Carlson, Montana Association of Social Workers

John Ortwein, Montana Catholic Conference

Proponent Testimony:

John Madsen reiterated a case involving his wife and a sex offender and the eventual outcome of the episode.

Judith Carlson stated the necessity of counselling of the people who were involved in these crimes.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members: None.

Closing by Sponsor: Rep. Harper closed on the bill.

DISPOSITION OF HB 631

The Hearing on HB 631 was held on February 13, 1989.

Motion: A Motion was made by Rep. Russell to move the bill.

Discussion: Discussion followed by the committee.

Recommendation and Vote: A Motion was made by Rep. Boharski to DO PASS. A vote was taken to DO PASS and all voted in favor with the exception of Reps. Lee, Boharski and Simon. Motion carries.

DISPOSITION OF HB 682

The Hearing on HB 682 was held on February 15, 1989.

Motion: Rep. Russell made a Motion to DO PASS.

Amendments, Discussion, and Votes: Rep. Simon made a Motion to move the amendments presented by the sponsor. A vote was taken and all voted in favor.

Recommendation and Vote: Rep. Russell made a Motion to DO PASS AS AMENDED. A vote was taken and all voted in favor.

DISPOSITION OF HB 653

The Hearing on HB 653 was held on February 15, 1989.

Motion: Rep. Gould made a Motion to DO PASS.

Discussion: Rep. Good questioned the fiscal note. Further discussion of the bill was made by Rep. Boharski which Rep. Lee also supported as did Rep. Russell, Blotkamp and Squires.

Recommendation and Vote: Rep. Whalen made a Motion to DO PASS. A vote was taken and all voted in favor.

DISPOSITION OF HB 654

The Hearing on HB 654 was held on HB 654 on February 15, 1989.

Motion: Rep. Russell made a Motion to DO PASS.

Discussion: Discussion followed by members of the committee.

Recommendation and Vote: A vote was taken to DO PASS and all voted in favor with the exception of Reps. Simon, Gould and Nelson.

DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2.15-89

NAME	PRESENT	ABSENT	EXCUSED
Stella Jean Hansen	✓		
Bill Strizich	✓		
Robert Blotkamp	✓		
Jan Brown	✓		
Lloyd McCormick	✓		
Angela Russell	✓		
Carolyn Squires	✓		
Jessica Stickney	✓		
Timothy Whalen	✓		
William Boharski	✓		
Susan Good	✓		
Budd Gould	✓		
Roger Knapp	✓		
Thomas Lee	✓		
Thomas Nelson	✓		
Bruce Simon	✓		

CS-30

2-16-89
3.1, Sa.

STANDING COMMITTEE REPORT

February 16, 1989

Mr. Speaker: We, the committee on Human Services and Aging report that House Bill 682 (first reading copy -- white) do pass as amended .

Signed: Stella Jean Hansen
Stella Jean Hansen, Chairman

And, that such amendments read:

1. Page 2, line 1.
Strike: "authority"
Insert: "unit or project"

2. Page 2, line 24.
Strike: "authority"
Insert: "unit or project"

3. Page 6, line 6.
Strike: "authority"
Insert: "unit or project"

4. Page 6, line 10.
Strike: "authority"
Insert: "unit or project"

5. Page 6, line 20.
Following: "alternate"
Insert: "or an interim tenant appointee selected by the commission"

Montana Catholic Conference

February 15, 1989

CHAIRPERSON HANSEN AND MEMBERS OF THE HUMAN SERVICES COMMITTEE

I am John Ortwein representing the Montana Catholic Conference.

This past year in testimony before both the Republican and Democratic platform committees, Frank Monahan of the United States Catholic Conference offered the following testimony regarding the question of housing in this country.

Public policy must give direction and set basic criteria that will establish a commitment to decent housing. Among the various housing policy recommendations of the United States Catholic Conference was the policy to encourage wide participation of tenants, community groups and consumers in the housing decisions that affect their communities.

House Bill 682 affords tenants the right to be a part of the decision making process in decisions that will affect their lives. We hope that this committee will recommend a "do pass" on H.B. 682.

EXHIBIT 1
DATE 2-15-89
HB 682

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

OPENING STATEMENT BY MARK O'KEEFE

For some time now both Congress and HUD have encouraged Public Housing Authorities to have tenant commissioners.

Two HUD Circulars (RHM 7401.1, Appointment of Tenants as Local Housing Authority Commissioners and 211 of the Housing and Urban Development Act of 1970 & 1971) states the need and desirability of tenant commissioners to sit on Public Housing Boards.

Tenants have a right to have a voice in public housing decisions that effect them. Public Housing is not in the business for profit but the sole purpose for it's existence is to serve low income people by providing the basic necessity of housing.

HB 682 provides for an election process for tenants to elect their representatives. 2 representatives will be elected, one to represent the family tenants and one to represent elderly and/or handicapped.

In the past the main legal obstacle to tenants serving on the Housing Authority Boards was an interpetation of state conflict of interest statues.

Federal statute, amended in 1974, provides that:

"No person should be barred from serving on the Board of Directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project."
(42 U.S.C.A. 1437(West 1977).

HUD has also responded to this concern in it's circular of Jan. 23, 1971 by urging Public Housing Authorities to examine their own operating policies and relevant state laws as appropriate and to make or recommended changes in those policies and laws in order to remove barriers to tenant appointments as Local Housing Authority Commissioners.

HB 682 eliminates the conflict of interest problem in Montanta law and provides for tenants to serve as public housing commissioners.

HB 682 will enable tenants to elect their representatives in a truly democratic process that moves tenants towards self-sufficency and better tenant/management relations.

Just as we are elected to serve our communities so should the tenants have that right to elect a representative to serve their interests.

Passage of HB 682 puts into effect this basic belief and would guarantee Public Housing Authority tenants that right.

I urge your support for HB 682.

12.2.7 TENANT COMMISSIONERS

Tenants sit on some PHA Boards. The federal statute, which was amended in 1974, provides that:

> No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-income housing project.[99]

HUD has reiterated the need and desirability of tenant commissioners in two separate Circulars.[100]

Despite congressional and HUD urgings, many PHAs do not have tenant commissioners. The reasons for the lack of tenant commissioners is often political. Most PHA commissioners are appointed by the local governing body, i.e., the city council or mayor.

There remains perhaps one legal obstacle to tenant commissioners. It is the interpretation of state conflict of interest statutes. Prior to the 1974 amendments to the tenant commissioner statute, at least two state attorney generals (Illinois and Connecticut) interpreted the state conflict of interest laws to preclude tenant commissioners.[101] Litigation in both Illinois and Connecticut sustained the attorneys general's interpretations. These administrative and judicial interpretations are now perhaps overruled by the 1974 amendments quoted above.[102] In Connecticut in particular, the judicial interpretation has been nullified by the state legislature. The Connecticut public housing statutes have been amended to eliminate claims that a PHA tenant has an inherent conflict of interest and thus cannot serve on a PHA board.[103]

In contrast to the experience in Illinois and Connecticut, the attorneys general in other states faced with similar conflict of interest statutes have found that no conflict exists.[104] Other states have responded to the problem by enacting laws mandating tenant commissioners. In California, for example, each PHA Board must have two tenant commissioners.[105]

HUD has also responded to the problem of conflict of interest and urged PHAs:

> to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners.[106]

In light of HUD's position and the 1974 amendments which clarify the federal position, tenant organizations are urged to seek tenant representatives on the PHA's Board. In addition, if necessary, tenant organizations should advocate statutory reforms. Mandating tenant commissioners is an appealing housing issue because of the potential benefit for public housing and because it will not cost the state or federal government anything if enacted.

12.2.8 TENANT ACCESS TO HOUSING AUTHORITY BOARD OF COMMISSIONER MEETINGS: STATE SUNSHINE LAWS

12.2.8.1 Introduction

Local housing authority board of commissioner meetings provide tenant organizations with a unique opportunity to obtain information and influence decision-making. Tenant access to and participation in these meetings should therefore be pursued as an organizational goal. The Tenant Participation Task Force Report recommends that there be regularly scheduled meetings between representatives of the tenant organization and the PHA Board; that the tenant organization receive notice of the PHA Board meetings and copies of the agenda with attachments; that the tenant organization representative be permitted to speak on all agenda items; and that a standing agenda item should include tenant and tenant organization concerns.[107] Most boards neither encourage nor directly resist such active tenant involvement.

If the board of commissioners goes so far as to conduct housing authority business in closed sessions, the board or its members may be violating the state's "sunshine" or "open meetings" law.[108] All fifty states and the District of Columbia have passed some type of open meeting legislation[109] applicable to a broad range of state, county, and local governmental bodies, both elective and appointive. The laws of the individual states are extremely diverse in content. State statutes vary principally with respect to the scope of coverage, the extent to which executive sessions are authorized, notice requirements, and the methods for enforcing the statutory directives.

With these differences in mind, the following issues should be considered by tenant organizations and Legal Services attorneys when applying the state sunshine statute to specific meetings of the housing authority board of commissioners: (1) Is the convening body, i.e., the board of commissioners, covered under the statute? (2) Is the proceeding a

99. 42 U.S.C.A. § 1437 (West 1977).
100. HUD Circular, RHM 7401.1, Appointment of Tenants as Local Housing Authority Commissioners (July 14, 1970); HUD Circular, RHM 7401.1, Appointment of Tenants as Local Housing Authority Commissioners, § 211 of the Housing and Urban Development Act of 1970 (Jan. 23, 1971).
101. *See* Housing Auth. of New Haven v. Dorsey, 164 Conn. 247, 320 A.2d 820 (1973), *cert. denied*, 414 U.S. 1043 (1973); Brown v. Kirk, 64 Ill. 2d 144, 335 N.E.2d 12 (1976).
102. *Compare* Housing and Urban Development Act of 1970, Pub. L. 91-609, § 211, 84 Stat. 1770 (1970) *with* 42 U.S.C.A. § 1437 (West 1977).
103. *See* CONN. GEN. STAT. ANN. §§ 8-41, 8-42 (West Supp. 1980).
104. *See* Letter of Attorney General Robert L. Shevin, Florida Office of Attorney General No. 73-96 (March 29, 1973); Ohio Op. Att'y Gen. No. 71-057 (Sept. 22, 1971).
105. CAL. HEALTH & SAFETY CODE, §§ 34270, 34272 (West Supp. 1980) (amended the public housing enabling statute to eliminate the conflict of interest).
106. HUD Circular RHM 7401.1 (Jan. 23, 1971), *supra* note 100, ¶ 2c.
107. HUD, TASK FORCE REPORT ON TENANT PARTICIPATION, *supra* note 50, at 13-15. *See also* Massachusetts Regulations for Tenant Participation, *supra* note 72, §§ 16.1.2, 16.1.3; HUD Circular, CHFRHM 7485.1, *supra* note 33, ¶ c(6).
108. The right to attend public meetings is entirely statutory in origin. *See generally* Note, *Open Meeting Statutes: The Press Fights for the "Right to Know,"* 75 HARV. L. REV. 1199, 1203 (1962).
109. State open meeting laws are listed in Note, *Administrative Law*, 8 CUM. L. REV. 539, 544 n.39 (1977).

Concerned Citizens' Coalition
825 3RD AVENUE SOUTH • GREAT FALLS, MONTANA 59405 • (406) 727-9136

My name is Donna Day and I reside in Public Housing in Great Falls. I am strongly in favor of House Bill 682 and urge its passage.

With the passage of this bill, tenants would have a voice in the representatives on the Housing Authority Commision. I feel it is very important for both the Housing Authority and the tenants that the opinions and the needs of the residents are heard, and that they have a voice in the laws that affect them and the lives of their families and neighbors. HB 682 is in the best interests of the tenants and housing authority. I feel that the needs of these people are not fully comprehended unless those who live with these needs can express them. Representation is one of the foundations of the democratic process, and too often low income people are left out in the cold. I urge you to please pass House Bill 682.

EXHIBIT 2
DATE 2-15-89
HB 682

MONTANA LOW-INCOME COALITION

P.O. BOX 1029
HELENA, MONTANA 59624
(406) 449-8801
(406) 443-0012

BUTTE
COMMUNITY UNION
115 HAMILTON
BUTTE 59701 • 782-0670

BOZEMAN
HOUSING COALITION
226 EAST KOCH
BOZEMAN 59715 • 587-3736

CONCERNED CITIZENS
COALITION
825 THIRD AVENUE SOUTH
GREAT FALLS 59402 • 727-9136

LAST CHANCE
PEACEMAKERS COALITION
107 WEST LAWRENCE
HELENA 59601 • 449-8630

LOW INCOME
SENIOR CITIZENS ADVOCATES
BOX 897
HELENA 59624 • 443-1630

MONTANA ALLIANCE FOR
PROGRESSIVE POLICY
324 FULLER
HELENA 59601 • 443-7283

MONTANA LEGAL SERVICES
EMPLOYEES ASSOCIATION
801 N. MAIN
HELENA 59601 • 442-9830

MONTANA
SENIOR CITIZENS ASSOCIATION
BOX 423
HELENA 59624 • 443-5341

MONTANANS
FOR SOCIAL JUSTICE
436 NORTH JACKSON
HELENA 59601 • 449-3140 • 227-8694

POWELL COUNTY
NEIGHBORHOOD
SUPPORT GROUP
BOX 342
DEER LODGE 59722 • 846-3437

TESTIMONY IN SUPPORT OF H B 682
BEFORE THE
HOUSE HUMAN SERVICES AND AGING COMMITTEE
STELLA JEAN HANSON, CHAIRPERSON

Madam Chair and Members of the Committee:

My name is Virginia Jellison; I'm the Lobbyist for the Montana Low Income Coalition and MLIC requests your support and the passage of H B 682.

MLIC is a coalition of member-based groups that deal with issues of social justice, equity and peace. Many of our members, and the people we speak for today, are low income; some lucky ones are tenants in public housing. It is on behalf of public housing tenants that we ask your support for H B 682.

Another part of my testimony has to do with my experience with public housing.

As a Missoula City Council member, I authored the legislation establishing the Missoula Housing Authority in 1978. Later, I became the Executive Director of Missoula PHA; and then Exec. Dir. for a county PHA in Eastern Oregon and then the Principal Manager of the St. Paul Public Housing Agency. In St. Paul, I ran the management division that provided the property management functions for over 4,300 public housing units.

In Oregon and Minnesota, the state laws require tenants on PHA boards. In both cases, I found tenant commissioners to be a valuable asset to the authority--their participation provided much needed input in management and policy decisions.

Tenants can become more familiar with and understanding of HUD regulations and constraints effecting PHAs through their tenant commissioners.

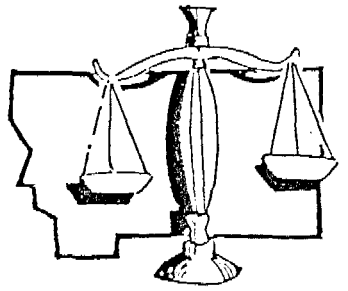
EXHIBIT 3
DATE 2-15-89
HB 682

Housing Authorities will find that tenants, overall, will make responsible decisions about serious and complex issues when they have a vested interest in the decision making process. Allowing tenants to become PHA commissioners will insure that. Tenants become strong allies for public housing and more vocal in expressing critical issues to HUD on behalf of the local PHAs. Many times, a PHA may be unable to resist or protest a ridiculous and unreasonable demand from HUD, but the tenants can and will protest loudly an behalf of the PHA. And both HUD and congress will listen when the tenants speak.

That actually happened in St. Paul. Congress would have taken an adverse action on all public housing if it had not been for the tenant's protest. Our elderly tenants wrote 700 letters to their congressmen and the govenor of Minnesota and along with other tenants nationwide, that adverse decision was not made.

Some people are concerned that tenant commissioners might make unreasonable demands on the PHA. I don't believe that will happen. Their request may express a true need of tenants that the PHA may or may not be able to fulfill--at that time. But surely, the tenants have a right to be heard. And even if a request can not be met then, maybe it can be met sometime in the future. At least the PHA will be aware of tenant needs and concerns and can make an attempt to serve those who they are mandated by law to serve--the tenants.

Madam Chair and Members of the Committee, I urge your support for H B 682 and request that you give it a "do pass". Thank you.



Montanans For Social Justice

436 North Jackson
Helena, Montana 59601
(406) 442-7752

TESTIMONY IN SUPPORT OF HB 682 offered by
Marcia Schreder

Good afternoon Madamn Chair and Committee Members. My name is Marcia Schreder and I am an active member of Montanans for Social Justice. Further I live in public housing and thus HB 682 affects me directly. Today I come to ask your support of this bill.

Having been active since 1986 in tenant and housing issues, I've come to appreciate the importance of management/tenant relations. Working with the local housing commission, I feel I have learned a great deal about management concerns and that management has also learned from us. The passage of HB 682 would further this reciprical commitment and educationtal process, as well as enable the continued betterment of housing projects. Beyond this, tenants will take ownership and responsibility for decisions and policies that are made with their input. Further, they will respect and understand the processes through which these decisions are made. We urge you to support HB 682.

EXHIBIT 4
DATE 2-15-89
HB 682

VISITORS' REGISTER

_____ COMMITTEE

BILL NO. HB682 DATE 2-15-89

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
LISA ZIER	MSJ	✓	
Marcia Schreder	MSJ	✓	
Pam Marshall	Montanans For Social Justice	✓	
Donna Day	GT Falls Concerned Citiz Coalition	✓	
Maribelle Kiebs	Gt Falls -	✓	
Janet Burley	Great Falls CCC	✓	
Virginia Jellison	MLIC	✓	
Robert Dozier	N.P.R.C.	✓	
Sue Fifield	MLIC	✓	
Earl Reilly	MSCA	✓	
Hugh Standley	LIGHT	✓	
Nancy Griffin	Montana Fs Lobby	✓	
Joseph Moore	Mt. Rainbow Coalition	✓	
[illegible]	HD36	✓	
John Ortwein	Mt Catholic Conf	✓	
[illegible]	MT STATE AFL-CFO	✓	
Brenda Nordlund	MT Women's Lobby	✓	
Angela Russell	HD 99	✓	
Rick Van Oosen	Msla - MPA	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

_____ COMMITTEE

BILL NO. SB-682. DATE _____

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
EUGENE FENDERSEN	Helena	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By Chairman Ethel M. Harding, on March 16, 1989, at 1:00 p.m. in room 405, State Capitol

ROLL CALL

Members Present: Chairman Ethel M. Harding; Vice Chairman Bruce D. Crippen; Senators R.J. "Dick" Pinsoneault, Tom Beck, Eleanor Vaughn, H.W. "Swede" Hammond, Mike Walker, Gene Thayer, Paul Boylan

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Council; Dolores Harris, Committee Secretary

Announcements/Discussion: None

HEARING ON HOUSE BILL 682

Presentation and Opening Statement by Sponsor:

Representative Mark O'Keefe, house district 45, down town Helena and Unionville, stated HB 682 will allow for 2 tenants of each housing authority to serve on the governing housing board. Under 1976 A.G's. opinion the state of Montana stated that because of the conflict of interest tenants could not serve on housing boards. The federal statute as amended in 1974, states that no person should be barred from serving on the board of directors of the local housing agency because of his tenancy in a low income housing project. Public housing is not in the business for profit, but it's purpose is to serve low income people by providing the basic necessity of housing. He passed out a fact sheet to each committee member and a copy of a federal HUD circular, which states the need and desirability of tenant commissioners to sit on public housing boards. See exhibits # 1 and # 2. This is a basic democratic right in society to be represented in the group that govern you, whether it's housing authorities, or any other government entity.

List of Testifying Proponents and What Group they Represent:

Virginia Jellison, MCIC
Rod Burch, Mt for Social Justice
Joseph Moore, MT Rainbow Coalition, Legislative Coordinator
Susan Good, Rep. H.D. 36, Great Falls and a landlord
Lisa Zier, M.S.J.
Jim Smith, Human Resource Development Council
Don Reed, M.A.P.P.
Richard Sprung, Butte
Earl J. Reilly, MT. Seniors Association

List of Testifying Opponents and What Group They Represent:

Gene Vuckovich, Anaconda-Deer Lodge County, MGR
Robert D. Vine, Anaconda Housing Authority
Henry D. Smith, Exec. Dir. Anaconda Housing Authority
Robert Goff,
Shelly Laine, Director of Administrative Services, Helena
Charlene Hagan, Anaconda, MT

Testimony:

Susan Good stated that the person who can best explain the needs and position of the tenants of a project is one of their own number. The person who can best communicate the rational and actions of the board to the tenants is again one of their own number.

Lisa Zier is a member of Montanans for Social Justice and a tenant of Helena Housing Authority and she urged support of HB 682. She read written testimony. See exhibit 3.

Jim Smith stated that for the past 25 years federal law has required the Human Resource Development Councils to have low income people represented on their boards of directors. He stated that the low income representatives on his boards of directors make an excellent contribution to the agency. And it is his belief that those agencies make an excellent contribution to the communities that they serve. He told of a board meeting yesterday afternoon where there were county commissioners, private business people, community people, low income people, elderly people who come to the agency every day for their noon meal, a young woman with children who are enrolled in Headstart, and a mother of a youth in the youth employment program. It is this mix of representation from the community that enables his agency to respond to their needs. I support this bill.

Virginia Jellison, lobbyist for the Montana Low-Income Coalition, passed out a flyer and her written testimony. See exhibits #4 and #5. She supports this bill.

Tony Casiano gave written testimony in support of HB 682. See exhibit #6.

Joseph Moore gave written testimony in support of HB 682. See exhibit #7.

Angela Russell, representative from house district 99, Lodge Grass, stated she supports this bill.

Rodger Burch gave written testimony in support of HB 682. See exhibit 8.

Don Reed is a proponent of HB 682 as he believes people should be represented in their governing bodies.

Richard Sprung from Butte came in support of HB 682. It is a well written sensible piece of legislation that allows people to have some control of their lives. Allowing them to control their lives helps them rebuild their lives.

Earl Riley from Helena Montana Senior Citizens Association supports this legislation.

Marcia Schreder gave written testimony in support of HB 682. See exhibit #9.

Gene Vukovich is an opponent to HB 682 in it's present form. He objects strongly to the manner in which the "tenant commissioners" are to be chosen. He doesn't think there is a need for this legislation and no need to increase the members of the housing board. During the past 15 years the Anaconda Housing Authority has operated with no problems, thus they question the need for this bill. Nothing contained in the by-laws of the housing authority of Anaconda would preclude a tenant from be appointed to serve on said board at the present time. To the best of his knowledge no tenant has expressed a desire to serve. If any tenant member names were given to the commissioners to offer to serve on the housing board, he's certain they would be given equal consideration. He objected to two types of commissioners, 1. those appointed by the duly elected representatives of Anaconda, and 2. those elected by and answerable only to the tenants, which could have special interest in the operation and maintenance of

the housing authority. He understands there are states that require tenants on their boards or allow them to serve. But in all instances the representatives are appointed by the duly elected representatives of the community. They are not elected by a special interest group. He cannot find any instruction in HUD which instructs them to include tenants on the board. He urged this committee to do not pass this legislation or amend same to allow the duly elected representatives of the communities to appoint the tenant commissioners in the same manner as the other members of the housing authority boards are appointed.

Robert D. Vine stated he had written two letters explaining his position as chairman of the board for the Anaconda housing authority. He stated Gene Vuckovich, Anaconda City-County Manager, is one of their former tenants. He is available for questions. See exhibit #10.

Henry Smith as director of the Anaconda Housing Authority has an open door policy with his tenants. He brings the problems to the board. It would be alright to have a tenant on the board, but the board member tenant should be appointed the same as the other board members.

Robert Goff chairman of the Great Falls Housing Authority stated his problem is that there is a conflict of interest and it does exist. He said the tenants have a "vested interest" in what goes on, and thus they would be voting on things that directly effect themselves. They would vote on collection problems, eviction problems, on general residence policies, dealings with staff members, and they would have access to confidential information. How can staff evict a commissioner? That puts an incredibly impossible burden on the other commissioners. He thinks there is no way you can eliminate the conflict of interest. There is no question in his mind that tenants want representation, but that issues has to be solved through membership on the board. I believe that the commission in Great Falls has a good open door policy. They have a system whereby tenants can bring there concerns to the board or staff or both. He urged do not pass this bill.

Shelly Laine said Helena has a housing authority with a 5 member commission. The members are appointed by the mayor with commissioners concurrent. The commission includes one designated tenant seat. The city encourages tenant participation and recognizes the

importance of it. The system works very well. Helena's concerns with this bill are as follows. The tenant turnover is 48% per year. It takes any member a year to two years to get up to speed in understanding the operation of the authority. This arrangement would make the continuity difficult to achieve. This would require a quota of tenant representation. Two members would be required regardless of tenant interest. The authority would have to find tenant representation. This bill makes the election the responsibility of the housing authority. The mayor and city commission urge you to consider amending the bill to provide for at least 1 member of the 5 member board to be a tenant and allow local governments to set their own election procedures. Please consider these concerns.

Dr. Hagen objects to the divisiveness this legislation brings to any board. They should work as a team and not a we and they philosophy.

Questions From Committee Members: Senator Crippen stated you testified that 13 states have tenant laws, 10 of which require; how do they do that? Gene Vuckovich explained that California requires 1 or more board members to be tenants in addition to the 5 housing authority members, the mayor shall appoint 2 additional members from the tenants to be members of the board. One tenant commissioner shall be over 62 if the authority has tenants of such age. Conn. says at least 1 of the 5 commissioners appointed by the chief executive officer of the municipality shall be a tenant of the authority for at least 1 year. Every state has them appointed by the governing body. How do they get the names Sen. Crippen asked. The tenants nominate 3 individuals and the governing body choose from those 3. Senator Crippen asked how they avoid the conflict of interest, say in raising the rent, etc.? Some attorneys made a survey to obtain this information. He said the chairman of the Butte Housing Authority is a tenant. Senator Crippen said whatever we do with this bill will change the A. Gs. opinion. Both sides have good points.

Senator Thayer asked Mark O'Keefe if he thought the board should remain at 5. He responded that representation is needed and whatever the committee decides would be fair.

Senator Beck asked Gene Vuckovich how many years his commissioners sit on the board. He answered it's a 5 year term and they are staggered so that 1 goes off at one time. The county commissioners choose the board.

Dr. Hagen who's been there 20 years had his father there before him.

Lucy Brown of Billings reiterated the conflict of interest problem. She thinks tenants should have a voice. Senator Beck thinks that we can not address conflict of interest in this bill.

Senator Thayer asked whether the by-laws have a confidentiality requirement? It is in the by-laws and when we accept the position we state that we will honor confidentiality. Senator Walker asked if the decisions made at the authority meetings have to be unanimous? Majority vote is fine. Mr. Vuckovich stated they usually all agree to the direction they must go. They have a tenant association that was created through a set of by-laws and they meet monthly and someone from the authority meets with them and consider their suggestions. HUD regulations are explained through that group. Senator Beck asked if their meetings are open to the public. Yes, they are bound by the open meeting law.

Senator Harding asked Shelly Laine about their tenant member on their board? Why you have a tenant member and how that member is appointed. The tenants submitted the names to the city commission and they made the selection based on applications received from tenants.

Closing by Sponsor: Representative Mark O'Keefe stated he learned some things and the testimony was informative. He has a copy of a page from HUD circular and it states they have responded to the conflict of interest in 1981 to closely examine their own operating policies and relevant state laws, and make changes in order to remove barriers to tenant appointments to local housing authorities. If necessary tenant organizations should advocate statutory reforms. He said the tenants had to bring this legislation forward when the housing authorities knew they should, but didn't. He called his Congressional offices and HUD even suggested tenant management. Montana doesn't have the legal right to have tenants on the board so we need to fix that part of the law. Please arrange so that these people have a voice in the government of the place where they live. I close.

DISPOSITION OF HOUSE BILL 682

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

HEARING ON HOUSE BILL 667

Presentation and Opening Statement by Sponsor:
Representative Good, house district # 36, Great Falls, stated that the Mayor of Great Falls asked her to bring this legislation. This is an act to allow a business improvement district to assess costs based upon the occupied or income-producing area above the first floor of a building.

List of Testifying Proponents and What Group they Represent:

Mike Rattray, City of Great Falls
Alex Hansen, League of Cities and Towns

List of Testifying Opponents and What Group They Represent:

None

Testimony: Mike Rattray stated the city of Great Falls is working with the downtown businesses to create an assessment formula. The main problem is trying to create a formula that is fair and agreeable to all the owners in the district. The crux of the problem is how do you treat a 1 story building and an 8 story building that are on the same size parcel? Current state statutes do not allow you to levy an assessment based on height, it allows them to levy an assessment based on the parcel area. The bill before you will allow the flexibility to take into account the density of building on the parcel. In other words, an 8 story building can be assessed accordingly.

Alex Hansen stated the Montana League of Cities and Towns supports this legislation because this bill makes assessment equitable. It gives the city another option of assessing costs of benefits provided by the city and is a more accurate method of assessing.

Questions From Committee Members: Senator Crippen asked why wouldn't taxable evaluation work here? Senator Thayer answered that Cascade County has had some problems with evaluations. There appears to be a discrepancy among similar type buildings and because of that Great Falls has had a great deal of difficulty in convincing the

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE 3-16-89
BILL NO. 682

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FACT SHEET ON HB 682

An Act providing for the electionship of two tenants of each Housing Authority as Housing Authority Commissioners; and amending sections 7-15-4406,-4431,-4432,-4435,-4436, and -4439,M.C.A.

MAJOR POINTS:

1. Expands the Housing Authority board from 5 to 7 Commissioners.(Section 1)

2. The 2 additional Commissioners are tenants residing in public housing who are elected by the tenants themselves. The bill also provides for 2 alternates to be elected at the same time in case the current tenant commissioner is no longer able to serve.

3. If there is no tenant, who wishes to be elected or serve as an alternate, the appointed Commissioners will appoint a tenant and an alternate to serve in that position to fill out the term until a tenant can be elected. (Section 2 & 3, sub.(4))

4. One elected tenant and one alternate shall represent elderly and/or handicapped residents; the other tenant commissioner shall represent family residents.

5. The current appointed commisioners will adopt by-laws outling the election process and will hold the first election. Subsequent elections will be held by the tenant commissioners at an annual meeting of the tenants.(Section 3, sub(2); Section 5)

6. Each tenant will have one vote. Tenants are both eligible to run for the position and to vote if they have lived in public housing at least 30 days prior to the election and are 18 years or older. (Section 4)

7. Section 6 which refers to the establishment of a new housing authority and Section 7 is mostly clean-up but includes language specifying the election of two tenant commissioners. The mayor is still responsible for the appointment of the 5 non-tenant commissioners and still designates the first chairman. (Section 6 & 7).

8. Section 8 outlines the term of office and provides for staggared terms, when tenant commissioners are first elected the same as for appointed commissioners.

9. Any conflict of interest question for tenant commissioners is addressed in section 9 which also addresses conflict of interest of appointed commissioners. Section 9 states that tenants do not have a conflict of interest by serving on a Public Housing Authority Board.

10. In Section 10 there is the provision for removal of a tenant commissioner due to inefficiency, neglect of duty or misconduct by a recall petition signed by at least 20% of the tenants. It also contains a process for appeal for that tenant commissioner.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
RENEWAL AND HOUSING MANAGEMENT

CIRCULAR

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 2
DATE 3-16-89
BILL NO SB 682

RHM 7401.1

1/28/71

Cancellation Date:

SUBJECT: Appointment of Tenants as Local Housing Authority Commissioners - Section 211 of the Housing and Urban Development Act of 1970

1. PURPOSE. The purpose of this Circular is to supplement RHM 7401.1 and call to the attention of local communities the policy statement concerning the appointment of tenants as Local Housing Authority commissioners contained in Section 211 of the Housing and Urban Development Act of 1970.

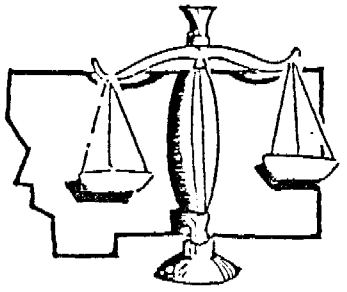
2. GENERAL.

a. Section 211 of the Housing and Urban Development Act of 1970 reads:

"Section 1 of the United States Housing Act of 1937 is amended by adding at the end thereof the following: 'It is the sense of the Congress that no person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a low-rent housing project.'"

b. The Department of Housing and Urban Development wishes to re-emphasize its strong commitment to the practice of appointing tenants to the Boards of Commissioners of Local Housing Authorities, as outlined in its Circular RHM 7401.1, dated 7/14/70. The declaration of the Congress in Section 211 complements the previously expressed policy of the Department.

c. All Local Housing Authorities are urged to closely examine their own operating policies and relevant state laws, as appropriate, and to make or recommend changes in those policies and laws in order to remove barriers to tenant appointment as Local Housing Authority Commissioners.



Montanans For Social Justice

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SENATE LOCAL GOVERNMENT
EXHIBIT NO. 3
DATE 3-16-89
BILL NO. HB682

TESTIMONY IN SUPPORT OF HB 682

Senator Ethel Harding, Chair

Good afternoon Madam Chair and Committee Members. My name is Lisa Zier and I am an active member of Montanans for Social Justice and a tenant of the Helena Housing Authority. I'm here today to urge your support of House Bill 682.

When tenants in Montana came together to discuss problems within the current Housing Authority structure, we all agreed that one issue of concern was the lack of tenant representation on housing boards. We felt that this bill addressed tenant and management rights to fair representation and democratic processes. The election process within this bill allows tenants to choose their representatives, and further, the bill overall creates a vehicle for better interaction and cooperation.

The Housing Authority enacts and enforces the policies affecting me and my children. I believe I have the right to fair representation and the right to choose who shall represent my interests and concerns. I trust that the representatives chosen will understand the importance of their elected positions and, beyond this, I trust in all matters of confidentiality they will honor the necessity to protect this piece responsibly. It is not so unlike you who represent us today, or unlike the trust we as citizens of this state have that you will also respect our confidential matters. I urge you to vote yes on House Bill 682

Viewpoint

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 4
DATE 3-16-89
BILL NO HB 682

By John Yates . . .

Who's afraid of the big, bad tenants

It was, to say the least, somewhat of an over-reaction when the Anaconda Housing Authority and the Anaconda-Deer Lodge County Commission went through the roof about legislation calling for the election of two tenants to housing boards.

Commissioners and authority members spoke of the legislation in terms befitting the Japanese attack on Pearl Harbor — and, in fact, literally likened it to Pearl Harbor.

It was a classic case of fear of rocking the boat.

The commissioners and authority members spoke in terms of the state usurpng their power to make appointments, but what they really meant is that they fear change.

First of all, they took the legislation as a slap in the face.

It isn't.

I have heard no one criticize the dedication of local Housing Authority members. I checked with some friends who live in public housing here, and none of them had any major complaints.

Anaconda's Housing Authority members have worked hard for many years at what must be regarded as a thankless task.

Instead of rapping housing boards, the legislation simply is a statement that tenants have a right to representation on boards that hold substantial power over their lives.

Lest we forget, that's what the Boston Tea Party was all about: Control without representation.

It also was the major cause of the American Revolution.

To say that Americans should have a voice — that is, official representation — on any governmental body that affects their lives is as American as apple pie.

Moreover, it is a fundament of Americanism that people should have the right to vote for their leaders. The Twentieth Century profusion of appointed officials, regardless of their quality, is an insult to the ideas of representative government.

Actually, one of my biggest regrets about the legislations is that tenants themselves did not demand representation on housing boards. Instead, a statewide coalition of poor people did all the work.

It's pretty sad when people don't take control over their lives, but rely on some organization to do it for them.

In many regards, the issue really centers around power.

The commissioners are worried that their power to make appointments to boards might be impinged by the legislation.

While I might say their power should be impinged in the name of democracy, the legislation doesn't alter the commissioners' right to appoint whomever they want to five board posts.

Remember, the tenants would be allowed to elect only two board members.

It also is arguable that people have more trust for officials they elect directly. I know I do.

A continual complaint around Anaconda is that the same faces are found on most boards and commissions here.

Local people largely believe that boards and commissions should attract new blood to widen their responsiveness to various segments in the community. I agree, and the proposed legislation would do much to accomplish what many see as an important local goal.

Power is also at stake for the housing board members (or at least, that's how they perceive it).

How can that be? The two elected representatives could be outvoted by the five Commission appointees on any issue.

A 5-2 vote can hardly be called a threat to power.

My preference would be to see a housing board of five members, either tenants or non-tenants, all of whom are elected by the general public.

I think the power issue the authority members really fear is a loss of control caused by the election of possible dissidents.

Certainly, tenants will be much more likely to question and challenge Authority decisions than appointees.

I think that's great. The best decisions come out of an atmosphere of open debate. The worst decision tend to come out of an atmosphere of unquestioning agreement.

Moreover, the authority members are worried that they might lose control over their meetings.

They would at times, but remember this: Control — rather than freedom — is the hallmark of totalitarianism, and the antithesis of democracy. Totalitarian regimes control people, purportedly "for their own good."

Democratic governments allow people to control their own lives.

Of course, democracy sometimes gets a little messy and it can't be called efficient.

For the Housing Authority, elected tenants probably will mean that more time will be spent addressing complaints, and policies that don't raise an eyebrow today probably will become controversial. Moreover, it probably means that some stormy issues will recur like a bad dream.

Such messiness is the price of democracy and political freedom.

And, I think, messiness is a very small price to pay for freedom and democracy, which are treasures indeed.

In discussion of the legislation, I detected a disturbing tone of condescension and paternalism among the comments.

Authority members said they didn't mind "good tenants" like a "wonderful little lady" on the Butte Authority.

That's a good way to start a war.

A "good" tenant is really a way of saying a "tame" tenant: In essence, an emasculated "yes man."

And calling someone a "wonderful little lady" is the best way I know of to stand a lot of women's hair on end. That means she smiles serenely, keeps her mouth shut and votes with the majority.

Paternalism crept in when the Authority members implied — and sometimes said — that they were best qualified to decide matters pertaining to tenants.

Nuts.

Poor people are just that: Poor. But poverty doesn't mean a person is incapable of making wise decisions about matters affecting their lives.

In fact, just the opposite might be true. It takes a managerial genius to survive at the poverty level. I doubt if any of the commissioners or authority members could cut the mustard for a month on a welfare budget.

Poor people need help to make their lives better. But they don't need paternalism. They need a helping hand rather than a "father knows best" attitude.

No one knows better than tenants about the problems of tenants. If anything, the membership of tenants on the Authority should be seen as a distinct asset.

The commissioners should have appointed several tenants to the Authority years ago. I guess that the fact that they didn't says something.

Power also is an issue for the tenants.

All people need to feel they have power and control over their lives. That is especially true for people who've been dealt some hard knocks.

As a former counselor, I can say that the first step in helping someone overcome a problem — any problem — is to help them find a sense of empowerment over their lives.

To accomplish anything, people simply must believe they have the power to influence their destinies.

When people are empowered, miracles can happen — both for themselves and, in this case, for the good of public housing in Anaconda.

There's another issue the commissioners and authority members must consider, even though it is no ill reflection on them. In many other parts of the country, people have some very valid complaints about housing authorities.

In a Pennsylvania town where I once reported the news, the housing authority was, at best, tyrranical.

In that town, the authority tried to control every aspect of tenants' lives, invading their privacy and abridging their fundamental rights. Dissidents were summarily evicted.

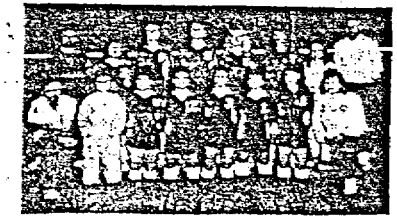
If abuses can happen there, they can also happen here in the future if the wrong people are someday appointed to the Authority.

Having tenants on the Authority is a natural check on possible abuses.

I think both the board and the commissioners should rethink their stance on the legislation.

And I hope they do.

Cookout/Poker Run
Anaconda Snowmobile Club will hold a cookout with refreshments for the club for paid up members
Sunday, March 12 • 11-4
Cabin at Peterson Meadows
Poker Run Extra Attraction
$5 per hand
NEW MEMBERS WELCOME!

ATHLETE Of The WEEK
Good Luck Copperheads!

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SENATE LOCAL GOVERNMENT
EXHIBIT NO. 5
DATE 3-16-89
BILL NO HB 682

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TESTIMONY IN SUPPORT OF H B 682
BEFORE THE
SENATE LOCAL GOVERNMENT COMMITTEE
ETHEL HARDING, CHAIRMAN

Madam Chair and Members of the Committee:

My name is Virginia Jellison; I'm the Lobbyist for the Montana Low Income Coalition and MLIC requests your support and the passage of H B 682.

MLIC is a coalition of member-based groups that deal with issues of social justice, equity and peace. Many of our members, and the people we speak for today, are low income; some lucky ones are tenants in public housing. It is on behalf of public housing tenants that we ask your support for H B 682.

Another part of my testimony has to do with my experience with public housing.

As a Missoula City Council member, I authored the legislation establishing the Missoula Housing Authority in 1978. Later, I became the Executive Director of Missoula PHA; and then Exec. Dir. for a county PHA in Eastern Oregon and then the Principal Manager of the St. Paul Public Housing Agency. In St. Paul, I ran the management division that provided the property management functions for over 4,300 public housing units.

In Oregon the state law requires a tenant on the PHA board. I found the tenant commissioner to be a valuable asset to the authority--her participation provided much needed input in management and policy decisions.

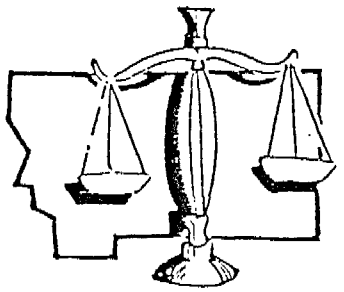
Tenants can become more familiar with and understanding of HUD regulations and constraints effecting PHAs through their tenant commissioners.

Housing Authorities will find that tenants, overall, will make responsible decisions about serious and complex issues when they have a vested interest in the decision making process. Allowing tenants to become PHA commissioners will insure that. Tenants become strong allies for public housing and more vocal in expressing critical issues to HUD on behalf of the local PHAs. Many times, a PHA may be unable to resist or protest a ridiculous and unreasonable demand from HUD, but the tenants can and will protest loudly an behalf of the PHA. And both HUD and congress will listen when the tenants speak.

That actually happened in St. Paul. Congress would have taken an adverse action on all public housing if it had not been for the tenant's protest. Our elderly tenants wrote 700 letters to their congressmen and the govenor of Minnesota and along with other tenants nationwide, that adverse decision was not made.

Some people are concerned that tenant commissioners might make unreasonable demands on the PHA. I don't believe that will happen. Their request may express a true need of tenants that the PHA may or may not be able to fulfill--at that time. But surely, the tenants have a right to be heard. And even if a request can not be met then, maybe it can be met sometime in the future. At least the PHA will be aware of tenant needs and concerns and can make an attempt to serve those who they are mandated by law to serve--the tenants.

Madam Chair and Members of the Committee, I urge your support for H B 682 and request that you give it a "do pass". Thank you.



Montanans For Social Justice

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SENATE LOCAL GOVERNMENT
EXHIBIT NO. 5
DATE 3-16-89
BILL NO. HB 682

TESTIMONY IN FAVOR OF HOUSE BILL 682

Senator Ethel Harding, Chair

My name is Tony Casiano and I am a member of Montanans For Social Justice, and a tenant of the Helena Housing Authority. I want to get involved in my community and I feel if House Bill 682 passes people who live in my community well get invoved and make it a better place to live. Thank you, and I ask you to vote yes on House Bill 682.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 7
DATE 3-16-89
BILL NO. HB 682

March 16, 1989

TESTIMONY IN SUPPORT OF HOUSE BILL 682

The Montana Rainbow Coalition supports H.B. 682 because we believe that this legislation promotes good government. The Random House Dictionary of the English Language defines government as "The political direction and control excercised over the actions of the members, citizens, or inhabitants of communities, societies, and states." Madam Chair and members of the committee, people who live in housing authority units are members of a community. This particular community is governed by a board of commissionors, appointed by the local Mayors. We believe that it is important that members of a community, citizens, should have the opportunity to elect in a democratic fashion the representatives who will be making decisions about matters that effect their daily lives. That is exactly what this piece of legislation will allow. Tennant representatives, democratically elected will enhance the administration of the housing authority by providing a responsible and responsive voice for tennants. We urge you, in the name of good government and democratic principles to support House Bill 682.

Joseph Moore
Legislative Coordinator
Montana Rainbow Coalition
58 s. Rodney, Helena Mt.

Montanans For Social Justice

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Helena, Montana 59601
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SENATE LOCAL GOVERNMENT
EXHIBIT NO. 8
DATE 3-16-89
BILL NO. HB-682

TESTIMONY IN SUPPORT OF HOUSE BILL 682

Senator Ethel Harding, Chair

My name is Rod Burch and I live in Public Housing in Helena. I strongly support House Bill 682 and urge you to vote in favor of its passage.

If House Bill 682 passes it would mean that I could help elect two tenants from Stewart Homes to represent me as a Housing Authority Commissioners. Tenants need a stronger voice in making decisions that affect our lives, and this bill will go a long way in doing that.

I urge your support of House Bill 682. Thank you.

Montanans For Social Justice

436 North Jackson
Helena, Montana 59601
(406) 442-7752

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 9
DATE 3-16-89
BILL NO. HB 682

TESTIMONY IN FAVOR OF HB 682

Senator Ethel Harding, Chair

My name in Marcia Schreder. I'm an active member of Montanans For Social Justice and chair of the Montana Low Income Coalition. I have lived in public housing approximately four years; three years here in Helena.

As one of the people instrumental in initiating HB 682, I think I can help you sift through some of the negative arguments you will hear later from the opponents.

I'm sure you'll hear that in the 1970's the Montana Attorney General Mike Greeley, at that time, released an opinion that a tenant on a public housing board would be a conflict of interest. Upon questioning he can't remember giving that opinion. Are tenants destined to be ruled by an old forgotten opionion. Because of the existence of this opinion and the apparent influence it has had on housing boards across the state, we felt it was important to introduce this bill to remove this barrier from a tenant sitting on a public housing board.

To my knowledge there is no opinion out there against a board member being a landlord of Section 8 housing. Now that would be a conflict of interest. Federal law regulates rent rates at 30% of your income and utility allowance policies are set by the whole board, so I find it hard to imagine a low-income person profiting from being a board member, at least financially profitting.

The opponents of HB 682 will try and convince you that a housing board will handle sticky issues involving other tenants and there is a

question of privacy with tenants on the board. What do the opponents think we expect a housing board member's duties to entail. This board determines policies for their housing. They know its important and any board member has to understand the importance of confidentiality while on this board.

By having only two tenant seats out of seven, as this bill outlines, means a tenant's vote is just that--one vote. By having a tenant's point of view in handling difficulties with tenants can be very helpful and beneficial to a board who most likely have never lived in public housing and are unfamiliar with its difficulties.

I will go out on a limb and assume our opponents would not be so bold as to outright admit to this assembly that they are afraid a tenant would not be intelligent enough to understand the intricate working of a public housing board. There are college graduates, people who have owned their own businesses, and people who have held high profile jobs living in public housing. Due to circumstances beyond their control, they now find themselves in need of the safety net public housing gives them to provide safe and affordable housing for senior citizens and low-income families.

I've given you some reasons our opponents may use as a smoke screen to prevent you from seeing the attributes to tenant's being involved in the processes that affect where they live. Now let me suggest some positive reasons.

One of the best examples I can give you as to the positive affects from direct tenant/board involvement is my own experience. When I got involved with tenant's issues theree years ago, I viewed Helena's Board as the enemy. I've often gone toe to toe with Gene Fenderson, the present chair, over issues I was sure that every member of that board was heartless and didn't have the best interest of the tenants at heart. I'm sure they thought of me as the enemy and a bit hostile as well.

But over the three years of my direct contact with the board, a strange thing has happened. We're not enemies anymore. We've gained each other's respect and have gained insight into each other's points of view. We still disagree and there's still things I hope to improve in my housing complex but by just getting to know the people on my housing board better, there is more of a commitment on everyone's part to find compromises and solutions to difficult and complex problems. The unwarranted fears both sides held for the other have been dispelled.

You can help break down the walls between tenants and housing boards. By tenant involvement, tenants will take more ownership and pride in their surroundings, and continue to make their housing a better place to live. Please vote yes on House Bill 682, for my family's sake.

Housing Authority of the City of Anaconda

P.O. BOX 1350 ANACONDA, MONTANA 59711

March 03, 1989

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 10
DATE 3-16-89
BILL NO. HB682

Senator Ethel M. Harding
Chairperson, Senate
Government Committee
Capitol Station
Helena, Montana 59620

Re: House Bill #682, "An Act providing for the election of two tenants of each Housing Authority as Housing Authority Commissioners."

Dear Senator Harding:

Representative William (Red) Menahan has informed us that HB #682, introduced by Representative O'Keefe and others, and approved by the House Committee on Services and Aging, with amended sections of the Montana codes, has been referred to your Senate Committee for review and further action.

Unfortunately, we didn't learn that this bill was introduced in the House of Representatives until it had reached the third reading. We have, therefore, strongly voiced our opposition to the Anaconda/Deer Lodge County Board of Commissioners and our City/County Manager, as well as all of Montana's Housing Authorities. We have also forwarded a copy of our letter of February 21, 1989 to all members of the Montana Senate. (In case you have mislaid your copy, another is enclosed.)

On March 1st, the Anaconda/Deer Lodge County Board of Commissioners by unanimous vote, supported our position as outlined in the above letter, and after learning of additional information we provided them, we would like to share with you and your committee such additional information.

We have ccntacted Dr. Leo Dauwer of Dower Associates, regarding HB #682. Dr. Dower is a nationally recognized management consultant for the National Association of Housing and Redevelopment Officials (NAHRO) in association with the Federal Housing and Urban Development (HUD) Department. Dr. Dauwer conducts numerous training seminars for Housing Authority Commissioners and Executive Directors throughout the United States.

Dr. Dauwer has contacted NAHRO's Washington D.C. headquarters and he was told they were "amazed" such a bill had been introduced in Montana where there are no large housing authorities and a relatively low percentage of minorities. (For instance, our ratio of minorities in Deer Lodge County is 2.8% (1980 Census), and we would assume this figure would be comparable with the average of all Montana counties with Housing Authorities.)

Further information provided us by Dr. Dauwer, reveals that there are only six (6) northeastern states that have mandated one (1) tenant commissioner. One western state (California) had mandated two (2) tenant commissioners. These states have large Housing Authorities and a high percentage of minorities, which is in sharp contrast to Montana.

In all of the above states, tenant commissioners are not elected by tenants, as provided in HB #682, but are appointed by the local city/county government. This time-honored procedure should be maintained and supported.

Our major objection to HB #682, is the mandatory election by tenants of tenant commissioners, and alternates to all Montana Housing Authorities. This raising of the traditional number of five (5) commissioners to seven (7) is far beyond the need of a state such as Montana for reasons delineated above.

We believe such violates the law, if not in fact at least in spirit. Further, we challenge the capricious amendment of six (6) Montana codes to accommodate the wishes of a relatively small percentage of Montana citizens. This could be construed as being an ill-advised and potentially dangerous precedent.

It is our belief that anyone acting in a judicial capacity, be it judge or legislator, who would ignore this aspect of an introduced bill would indeed be departing from Montana's finest legal and legislative traditions.

As the Supreme Court Justice Joseph Story (1779-1845) wisely observed, "equity in its true and genuine meaning is the soul and spirit of all law. Positive law is construed and rational law is made by it. In this, equity is synonymous to justice."

In conclusion, we respectfully ask you to please consider HB #682 in the glaring light of equity. As citizens of this great state, we look to our representatives to preserve equity. This should be the guiding light and ultimate goal of any legislative body representing fellow citizens in a democracy.

Sincerely,

R. D. Vine
Chairman of the Board

P. S. Should you wish to contact Dr. Dauwer, his address is:

20 Shady Lane
Needham, Massachusetts 02192
Telephone (617) 449-1362

xc: Montana Housing Authorities
Anaconda Housing Authority Commissioners
Anaconda/Deer Lodge County Manager and Commissioners
Representative William Menahan
Representative Robert Blotkamp
Senator Robert Pipinich
Senator J. D. Lynch
Senator Harry H. McLane
Senator Tom Beck
Senator Paul F. Boylan
Senator H. W. Hammond
Senator R. J. Pinsoneault
Senator Gene Thayer
Senator Eleanor L. Vaughn
Dr. Leo Dauwer

Enclosure

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 11
DATE 3-16-89
BILL NO. HB682

NAHRO National Association of Housing and Redevelopment Officials
1320 Eighteenth Street, Northwest, Washington, D.C. 20036-1803 (202) 429-2060
Fax (202) 429-9684

March 8, 1989

Mr. Henry D. Smith
Executive Director
Housing Authority of the City of Anaconda
Box 1350
Anaconda, Montana 59711

Dear Mr. Smith

This letter confirms the discussion we had concerning tenant commisssioners. There is no requirement in Federal law (U.S. Housing Act as amended) which requires residents to be represented on PHA Boards. The only reference is a provision in Section 2 of the U.S. Housing Act which states, "No person should be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a lower income housing project".

To the best of my knowledge there is no directive from HUD instructing PHAs to include residents on Boards.

While there are some jurisdictions which have requirements for residents on Boards, I don't know which state laws do or don't require such action. As I mentioned, you might contact the Housing Development Law Institute for the information they have on this subject.

Let me know if there is anything else we can do.

Sincerely,

Richard Y. Nelson, Jr.
Executive Director

Helen L. Sause, President, Apolonio Flores, Senior Vice President, Michael A. Garcia, Jr., Vice President-Commissioners, William H. Garrett, Vice President-Community Revitalization, and Intergovernmental, Jack Quinn, Vice President-Housing, Michael E. Kumatis, Vice President-Member Services, Ophelia B. Basgal, Vice President-Professional Development, Richard Y. Nelson, Jr., Executive Director

SPRENGER & LANG
ATTORNEYS AT LAW

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FAX (202) 332-6652

325 RIDGEWOOD AVENUE
MINNEAPOLIS, MINNESOTA 55403
(612) 871-8910
FAX (612) 871-9270
REPLY TO:
Washington

EISSBRODT*
C. SPRENGER*†
LANG*†
N. BARRON*‡
CCA K. TROTH*
M. HOLERT

*ITTED IN THE DISTRICT OF COLUMBIA
ITTED IN MINNESOTA
ITTED IN NEW YORK AND VIRGINIA

M E M O R A N D U M

To: Henry D. Smith
Executive Director
Housing Authority of the City of Anaconda

From: Jane Lang

Re: Survey of State Statutes
On Local Housing Authority Tenant Commissioners

Date: March 14, 1989

We have examined the 50 state housing authority statutes with respect to the issue of tenant commissioners. Of these, 13 state statutes have a specific reference to a tenant serving as a commissioner of a local housing authority. All other state statutes are silent with respect to tenant commissioners. It can be assumed in those states that with no specific reference that tenants, solely because of their status as tenants, would not be precluded from serving as housing authority commissioners. Furthermore, the United States Housing Act of 1937, as amended, provides in Section 2 that

> "no person shall be barred from serving on the board of directors or similar governing body of a local public housing agency because of his tenancy in a lower income housing project."

Following is a more detailed analysis of this statutory survey.

A. The following 13 state statutes specifically reference a tenant commissioner:

State	Code citation
California	CAL. [health and safety] CODE secs. 5-34270, 34271, and 34271.5 (West 1988)
Connecticut	CONN. GEN. STAT. ANN. sec. 8-41(a) (West 1988)
Florida	FLA. STAT. ANN. sec. 421.05, 421.27 (West 1988)
Illinois	ILL. ANN. STAT. ch. 67 1/2 sec. 5 (Smith-Hurd 1988)
Louisiana	LA. REV. STAT. ANN. sec. 401 (West 1988)
Maine	ME. REV. STAT. ANN. 30 sec. 4602 (1988)
Nebraska	NEB. REV. STAT. sec. 71-1524(2) (1984)
North Carolina	N.C. GEN. STAT. sec. 157-5 (1988)
Ohio	OHIO REV. CODE ANN. sec. 3735.27(c) (1988)
Oklahoma	OKLA. STAT. ANN. 63 sec. 1058(A) (West 1989)
Oregon	OR. REV. STAT. sec. 456.095(b)(4) (1987)
Rhode Island	R.I. GEN. LAWS sec. 45-25-10 (1988)
Tennessee	TENN. CODE ANN. sec. 13-20-117 (1988)

B. These 13 state statutes can be grouped into two categories: those that require one or more commissioners to be a tenant, and those that specifically allow one or more commissioners to be a tenant.

1. Requirement for one or more tenant commissioners:

State	Summary
California	In addition to 5 housing authority commissioners, the mayor of a city or governing body of a county shall appoint 2 additional commissioners who shall be tenants of the authority. One such tenant commissioner shall be over the age of 62, if the authority has tenants of such age.
Connecticut	At least one of the 5 commissioners appointed by the chief executive officer of the municipality (or governing body of the town) shall live in housing owned or managed by the authority. A tenant commissioner must have been a tenant of the authority for at least one year.
Florida	The mayor, with the approval of the governing body of the city, appoints at least 5 commissioners, at least one of whom shall be a resident current in rent in a housing project or recipient of housing assistance through the authority. No tenant commissioner shall be appointed until 10% of units in the first project of the authority are occupied. Cessation of tenancy in a housing project constitutes removal of the tenant commissioner from office. (See also Sec. 421-27).
Louisiana	In municipalities with populations of 500,000 or more, 7 commissioners shall be appointed by the mayor of the municipality, at least 2 of whom shall be tenants of the authority.

State	Summary
Maine	One of the 6 commissioners, appointed by the appointing authority, in a municipality with housing which is subsidized or assisted by HUD, one shall be a resident of such housing.
Ohio	At least one of the commissioners appointed by the chief executive officer of the most populous city shall be a resident of a dwelling unit owned or managed by the authority. At no time shall residents constitute a majority of the authority.
Oklahoma	At least one of the 5 commissioners, appointed by the mayor with the consent of the governing body (for a city) or by the board of county commissioners (for a county), shall be a tenant of the authority.
Oregon	One of the 5, 7, or 9 commissioners appointed by the governing body shall be a tenant of the authority, provided that the authority has at least 25 units occupied or 75% occupancy of the units available for occupancy, whichever occurs first.
Rhode Island	Three commissioners, appointed by the mayor, shall be occupants of public housing.
Tennessee	Any city or county with a metropolitan form of government shall have 2 commissioners, in addition to the 5 or 7 commissioners appointed by the mayor or county legislative body, who shall be residents of low-rent public housing or housing projects.

2. Optional provisions that allow one or more tenant commissioners:

State	Summary
Illinois	A tenant of the authority is not precluded from serving as a commissioner, provided that such tenancy is disclosed. No more than one tenant shall serve as a commissioner at any one time, except in a municipality having a population of more than one million.

State	Summary
Nebraska	Tenancy in authority housing shall not preclude appointment as a commissioner, and may be a requirement for one of the commissioners.
North Carolina	No person shall be barred from serving as a commissioner because that person is a tenant of the authority or a recipient of housing assistance through the authority. No more than 1/3 of the 5 to 9 commissioners shall be tenants of the authority or recipients of housing assistance through the authority. Certain specified counties are exempt from any provision allowing a tenant to serve as a commissioner.

C. Special provisions dealing with how tenant commissioners are selected are as follows:

State	Summary
Connecticut	Tenant organizations can indicate a desire to be notified of pending appointments. The Authority shall consider tenants suggested by such tenant organizations. (See Sec. 8-41(b)).
Louisiana	Tenant commissioners shall be chosen from a list submitted to the mayor by the Citywide Tenants Council, Inc. of the authority. The number of names submitted shall be 3 for each vacancy to be filled by a tenant commissioner.
Maine	Where tenant associations exist, the appointing authority shall give priority consideration to nominations made by the associations.
Nebraska	Tenant commissioners may be appointed in the same manner as other commissioners, except that tenant commissioners may be appointed from those nominated by the tenants. A tenant may be considered nominated when a petition signed by not less than 25 adult tenants of the authority, or 25% of the tenants, whichever is less.

State	Summary
Ohio	If there is an elected representative body of all residents of the authority, the chief executive officer shall notify this representative body whenever there is a vacancy in the resident commissioner's term. If such representative body provides the chief executive officer, within 60 days, a list of at least 5 residents willing and qualified to serve as commissioner, the chief executive officer shall appoint the resident commissioner from that list.
Rhode Island	The tenant commissioners are appointed by the mayor from a list of nominees chosen yearly by the occupants of public housing in open elections, each project choosing 3 nominees from among its occupants. The mayor shall remove any such commissioner not an occupant of public housing for six consecutive months.

D. Voting limitations or other references to tenant commissioners are found in the following state statutes:

State	Summary
Connecticut	No tenant commissioners shall have the authority to vote on any matter concerning the establishment or revision or rents to be charged in any housing by such authority. (Sec. 8-42).
Florida	A leasehold interest held by a tenant commissioner is exempt from the prohibition of a commissioner acquiring any interest in authority projects. (Sec. 421.06).
North Carolina	No tenant commissioner shall be qualified to vote on matters affecting his official conduct or his own individual tenancy.

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 12
DATE 3-16-89
BILL NO. HB682

Madam Chairwomen and Members of the Committee

We represent the Butte Community Union:

House Bill 682 is a good and timely piece of legislation. The election of tenant represenatives is necessary to breath new life and interest into the care and maintenance of Public Housing by the people who benefit from the service.

Butte-Silver Bow currently has a Tenant Commissioner on the board. This Commissioner has lived in two of the four low-income projects in Butte. She has served on the board approx. 15 years.

We feel the proposed legislation will help the residents of Public Housing take more direct charge of their lives, which is the starting point of self determination.

THANK YOU
BUTTE COMMUNITY UNION

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 13
DATE 3-16-89
BILL NO. HB 682

Montana Catholic Conference

March 16, 1989

CHAIRWOMAN HARDING AND THE SENATE LOCAL GOVERNMENT COMMITTEE

I am John Ortwein representing the Montana Catholic Conference.

This past year in testimony before both the Republican and Democratic platform committees, Frank Monahan of the United States Catholic Conference offered the following testimony regarding the question of housing in this country.

Public policy must give direction and set basic criteria that will establish a commitment to decent housing. Among the various housing policy recommendations of the United States Catholic Conference was the policy to encourage wide participation of tenants, community groups and consumers in the housing decisions that affect their communities.

House Bill 682 affords tenants the right to be a part of the decision making process in decisions that will affect their lives. We hope that this committee will recommend a "do pass" on H.B. 682.

Tel. (406) 442-5761 P.O. BOX 1708 530 N. EWING HELENA, MONTANA 59624

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 14
DATE 3-16-89
BILL NO. HB682

Amendments to House Bill No. 682
Third Reading Copy

Requested by Senator Walker
For the Senate Committee on Local Government

Prepared by Connie Erickson
March 21, 1989

1. Title, line 7.
Strike: "ELECTION"
Insert: "APPOINTMENT"

2. Page 1, line 13.
Strike: section 1 in its entirety

3. Page 1, line 16.
Strike: section 2 in its entirety

4. Page 1, line 24.
Strike: section 3 in its entirety

5. Page 2, line 16.
Strike: section 4 in its entirety

6. Page 3, line 3.
Strike: section 5 in its entirety
Renumber: subsequent sections

7. Page 3, line 19.
Following: "~~appoint~~"
Insert: "mayor to appoint"
Strike: "appointment of five"
Insert: "seven"
Strike: "and the election of two tenant commissioners"

8. Page 4, line 7.
Following: "~~official.~~"
Strike: the remainder of line 7 through "chairman" on line 9
Insert: "An authority shall consist of seven commissioners appointed by the mayor, and he shall designate the first chairman. A commissioner may not be a city official"

9. Page 4.
Following: line 9
Insert: "(2) Two of the commissioners must be tenants of the housing authority. One tenant commissioner shall represent family tenants and one tenant commissioner shall represent elderly and handicapped tenants. Nominees for tenant commissioner shall submit to the city clerk a petition signed by not less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater. The city clerk shall submit a list of the tenant nominees to the mayor for appointment to the housing authority. The staff of the housing authority may not involve itself in the nomination or appointment of tenant commissioners."

10. Page 4, line 10.
Following: "~~(2)~~"
Insert: "(3)"

11. Page 4, line 21.
Strike: "elected"
Insert: "appointed"

12. Page 4, line 23.
Strike: "election"
Insert: "appointment"

13. Page 4, line 24.
Strike: "5"
Insert: "2"

14. Page 5, lines 1 through 4.
Strike: "A" on line 1 through "appointed" on line 4

15. Page 5, line 24.
Strike: section 10 in its entirety
Renumber: subsequent section

16. Page 7, line 19.
Strike: section 12 in its entirety

HOUSING AUTHORITY OF BILLINGS
2415 1ST AVENUE NORTH
BILLINGS, MONTANA 59101
406-245-6391

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 15
DATE 3-16-89
BILL NO. HB 682

February 22, 1989

Ethel M. Harding
Representative of
Senate District No. 25
Capitol Station
Helena, Mt. 59620

Dear Representative Ethel M. Harding,

House Bill #682, that will be on the floor for second reading on Saturday, February 18, 1989, is in direct conflict with a former Attorney General's opinion #110, Vol. #37. State Attorney General Mike Greely stated that it is a conflict of interest for a tenant of a Public Housing Authority to serve as a Commissioner of a Public Housing Authority.

I am enclosing a copy of the opinion with the pertinent conflict of interest paragraphs highlighted in yellow. I hope that you will take this State Attorney General's opinion into consideration when voting for Bill No. 628.

Please share this letter and opinion with your colleagues in the House.

Thank you for your time and attention in this matter.

Respectfully,

John P. Gerharz
Chairman
Housing Authority of Billings

EQUAL HOUSING OPPORTUNITY

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 16
DATE 3-16-89 Crosby
BILL NO. HB 682

Attorney General Opinion Service
2210 E. 6th Helena, Montana

VOLUME NO. 37 OPINION NO. 110

CONFLICT OF INTEREST - Tenant in a housing authority is ineligible to serve as commissioner of the housing authority.

SECTION - 35-107, R.C.M. 1947.

HELD: A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority.

27 January 1978

David V. Gliko, Esq.
City Attorney
City of Great Falls
Great Falls, Montana 59403

Dear Mr. Gliko:

You have requested my opinion concerning whether a tenant in a housing authority may serve as a commissioner of the housing authority. A housing authority is a public body consisting of five commissioners, created pursuant to the Housing Authorities Law, Section 35-101, et. seq., R.C.M. 1947, and delegated powers to build and maintain safe and sanitary dwelling accomodations for persons of low income. The commissioners are appointed by the mayor. Section 35-105, R.C.M. 1947.

Your request is governed by Section 35-107, R.C.M. 1947, which states:

> No commissioner or employee of an authority shall acquire any interest direct or indirect in any housing project or in any property included or planned to be included in any project, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any housing project. If any commissioner or employee of any authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he shall immediately disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to so disclose such interest shall constitute misconduct in office.

The Montana Supreme Court has not construed this statute in the situation posed in your request. However, two states, Connecticut and Illinois, have interpreted similar statutory language as prohibiting tenants in a housing authority from serving as commissioners of the housing authority. Although decisions of sister states are not binding upon the Montana Supreme Court, the Court has stated that when a Montana statute is similar to one in a sister state, the Supreme

Court will give consideration to construction placed on that statute by courts of the sister state. Dept. of Highways v. Hy-Grade Auto Court, 169 Mont. 340, 546 P.2d 1050 (1976).

In Housing Authority of City of New Haven v. Dorsey, 164 Conn. 247, 320 A.2d 820 (1973), cert. denied 414 U.S. 1043 (1973), the Connecticut Supreme Court interpreted a statute identical to Section 35-107, R.C.M. 1947. The problem presented by a tenant of a housing authority serving as a commissioner is best stated in Dorsey at 822:

> Within the context of this common-law standard the General Assembly has provided by statute that no commissioner of a housing authority shall acquire any interest, direct or indirect, in any housing project. General Statutes §8-42. An "interest" has been defined as having a share or concern in some project or affair, as being involved, as liable to be affected or prejudiced, as having self-interest, and as being the opposite of disinterest. (Citation omitted.)
>
> The interests of a housing authority commissioner would center on the points at which management policies and functions of the authority come into contact with individual tenants. These include the selection and retention of tenants, the determination of rents to be charged, the services and other benefits to be furnished, and the enforcement of the rules governing the conduct and rights of the tenants. In fixing rents the commissioners must consider the payments on the principal and interest on the bonded indebtedness, the cost of insurance and administrative expenses, the amounts to be set aside in reserve for repair, maintenance and replacements, and vacancy and collection losses. (Citation omitted.)
>
> The task of fixing rent charges is such that a tenant commissioner might be called on to vote to increase his own rent in order to amortize and service the housing authority's debt obligation. If he is reluctant to increase rents which include his own, the housing authority might fail to pay its bonded indebtedness and permit unchecked physical depreciation of the properties. Matters on which the housing authority votes include the setting and the enforcing of its policies as to delinquent rents and the eviction of tenants. As a housing authority commissioner, a tenant would also be required to participiate in voting on decisions involving the hiring and firing of housing authority personnel who deal with him and his family from day to day.
>
> Thus, whether or not the tenant as a housing authority commissioner is in fact benefiting himself individually by his vote, his personal interests are always directly or indirectly involved in his vote on the commission. This is not to say that his personal interests are inevitably and on all occasions antagonistic to the interests of the housing authority. The fact, however, that he is a tenant makes it possible for his personal interests to become antagonistic to the faithful discharge of his public duty. (Citation omitted.)

Section 35-109, R.C.M. 1947, presents this same conflict of interests by granting housing authority commissioners the same powers discussed in Dorsey.

Support for this rationale is found in Brown v. Kirk, 64 Ill.2d 144, 355 N.E.2d 12 (1976), wherein the Illinois Supreme Court, citing Dorsey, held tenants of a housing authority ineligible to serve as commissioners.

In construing legislative intent, statutes must be read and considered in their entirety and legislative intent may not be gained from wording of any particular section or sentence, but only from consideration of the whole. Vita-Rich Dairy Inc. v. Dept. of Business Regulation, ___ Mont. ___, 553 P.2d 980 (1976). Reading Section 35-107, R.C.M. 1947, in its entirety, the disclosure requirements found in the second sentence only apply to pre-existing interests. Otherwise, the first sentence of Section 35-107, R.C.M. 1947, serves no useful purpose. There would be no bar to a commissioner or employee from acquiring an interest in a housing authority because he could simply disclose this interest after acquisition. Section 35-107, R.C.M. 1947, prohibits any commissioner from acquiring an interest in property included or planned to be included in a housing authority after his appointment, but does not require a commissioner to divest himself of interests acquired prior to his appointment. A commissioner is only required to disclose the latter type of interest.

The argument could be made that a person who is already a tenant of the housing authority remains eligible for appointment as commissioner. This argument was rejected by Brown. The court stated at p. 14:

> However apt this distinction between a newly acquired and pre-existing interest may be in cases where the question is purchase of property to be included in a project, we think that it is not appropriate in the case of a tenant, who retains a continuing contractual relationship with his landlord subject to periodic renewal.

This continuing contractual relationship between landlord and tenant is also prohibited by Section 59-501, R.C.M. 1947, which states:

> Members of the legislature, state, county, city, town, or township officers or any deputy or employee thereof, must not be interested in any contract made by them in their official capacity, or by any body, agency, or board of which they are members or employees.

THEREFORE, IT IS MY OPINION:

> A tenant in a housing authority is ineligible to serve as a commissioner of the housing authority.

Sincerely,

MIKE GREELY
Attorney General

MG/RA/br

37-110-3

DATE March 16, 1989

COMMITTEE ON Local Government

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Carol Daly	Flathead Econ. Dev. Corp.	244		✓
"	"	704	✓	
Colleen Allison	Mayor Columbia Falls	244		✓
		704	✓	
		647	✓	
Bob Lane	PWP	244		
Gordon Morris	MACo	244		✓
N.M. Paine	Helena-Planning Bd.	244		✓
Greg Vuckovich	Anaconda-Deer Lodge	682		✓
Robert D. Vine	Anaconda Housing Auth.	682		✓
Henry D. Smith	Anaconda Housing Auth	682		✓
Carmie Sullivan	Anaconda Housing	682		✓
Mike Staub	Anaconda Housing	682		✓
Charlene Hagan	Anaconda MT.	682		✓
Don Reed	MAPP	682	✓	
H.J. Hagan	Anaconda Housing Auth	682		✓
Angela Russell	HD 99	682	✓	
John M. Gallagher	BCU - Butte, MT	HB682	✓	
Richard B Lenny	24 N Main Butte	682	X	
Glen Ortelee	Mt Catholic Conf	682	X	
Gary S. Marbut	MRA, MASC, WMFGA, BSE	HB244	✓	
Brian D Whitehead	MAPA, MRSA, McGivern	HB244	✓	
BRIAN JUDY	NRA	HB244	✓	
Jon Hamond	Mont Sheriffs & Peace Officers	244		✓
R.L. Brasch	Western MT Fish & Game Assn	244	✓	
Kay Foster	City of Billings	244	✓	

DATE March 16, 1989

COMMITTEE ON Local Government

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Chuck Stearns	City of Missoula	HB647	✓	
Bob Goff	GTFls Hsng Auth	HB682		✓
Mike Rattray	Gt. Falls	HB667	✓	
Kevin Hayer	Gt Falls	HB682		
Roger Sanders	Cascade County	HB244		✓
Lucy Brown	Housing Auth. of Billings	HB682		✓
Pam Marshall	Montanans for Social Justice	HB682	✓	
Marcia Lehrer	Montanans for Social Justice MLC	HB682	✓	
Virginia Jamison	MCIC	HB682	✓	
Tony Castaw	Montanans for Social Justice	HB682	✓	
Rob Burch	Mt for Social Justice	HB682	✓	
Howard Gipe	Flathead Co. Comm	H.244		✓
Joseph Moore	Mt. Rainbow Coalition	HB682	✓	
Robert Keller	Private Citizen	HB682		✓
James McCabe	" "	HH607		✓
H. Terry Smith	Billings	HB244		
Jim Elwell	WCSW NWWC	HB244	✓	
Ivan W. Edwards	Jefferson Co	244		✓
Shelly Laize	City of Helena	244		✓
Shelly Laine	City of Helena	682	generally	
Susan Mason	Helena Housing	682	generally	
MARY KAY PECIC	GALLATIN Co Comm.	244	✓	✓
JEFFREY N. SMITH	BUTTE SILVER BOW	244 HB		✓
Ellen Woodbury	Belgrade City-County	244		✓
LISA ZIER	MSJ	682	✓	
EARL J. REILLY	Mont. Seniors Assoc.	282	✓	

BE CONCURRED IN. The VOTE was UNANIMOUS in FAVOR OF HB 656. Senator Hoffman will carry this bill to the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 667

Discussion: Senator Harding stated HB 667 is representative Good's bill from Great Falls. Senator Crippen stated we didn't have any amendments on this one. Connie Erickson stated that in 7-12-1114 there is right of protest provision. It gives 3 possibilities; Owners of property in the proposed district have the taxable evaluation when aggregated representing not less than 50% of the total taxable valuation property within the district. Or not less than 50% of the owners of property within the district. Or owners of property within the proposed district have the projected assessments when aggregated representing not less than 50% of the total projected assessments. Currently that's what the law says. Senator Crippen stated that would cover this bill.

Recommendations & Vote: Senator Thayer MOVED that we DO CONCUR in HB 667. The VOTE was UNANIMOUS in FAVOR of CONCURRING in HB 667. Senator Thayer will carry HB 667 to the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 682

Discussion: Senator Walker asked Connie Erickson to draft a proposed amendment to HB 682 and she gave these out to the committee. Senator Walker stated that these amendments will address the issue of the tenants electing someone to the board without the board having any voice in the choice. This amendment changes the board from 5 to 7 members. The tenants through a process of petition signed by no less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater, make themselves available to serve on the board. That would qualify the nominees to be on a list, then that list would be given to the mayor and the mayor would appoint from that list who he thought would be best. One of those people would represent tenants and the other would represent the disabled and elderly. The terms would be 2 years, instead of the 4 or 5 year terms the other members have. This would give them some say, it lets the mayor do the picking, and the person has to get his petition signed. It gives both sides a bit of what they asked, and it's a fair proposal.

Senator Thayer thought we were going to leave the board at 5

members with 1 member a tenant. 7 member boards can be unwieldy. Connie Erickson stated the reason that they asked to increase the board was that they did not want to eliminate any current members to a tenant commissioner. We did not want to displace anyone currently serving on the board.

Senator Crippen asked how big is the smallest housing units? 50 units is the smallest. Senator Crippen liked the idea of 2 for the reason that one tenant on a board might be over-awed by the others. Two would work together and on a 7 member board it seems about right. Senator Thayer asked if we could have just 1. Senator Walker stated they wanted to represent a broader spectrum of the people within the development. Senator Pinsoneault agreed with the 2, one for younger, and one for elderly and disabled. This seems to give a good balance to the board. Senator Crippen stated one would check on the other, too.

Senator Hammond stated this amendment takes care of one strong feeling, and that was if they were going to allow tenants on the board that they be appointed in the same manner as they were. These amendments do that. He has only one home in his area and they are completely opposed to this bill, so the number 1 or 2 matters little.

Amendments & Votes: Senator Walker MOVED that we ACCEPT the AMENDMENTS as presented in Exhibit 1. The VOTE was 7 IN FAVOR of accepting these amendments and Senator Thayer and Senator Beck OPPOSED the amendment. MOTION CARRIED.

Recommendation and Votes: Senator Pinsoneault MOVED that we DO CONCUR AS AMENDED in HB 682. Senator Thayer asked if anyone testified about tenants advisory boards? He said in Great Falls their advisory board does this anyway. He doesn't think there are any problems with the way things are. The people involved in these housing authorities really have the tenants at heart. Senator Walker stated there is a federal standard that is requiring them to put tenants on the board. HUD has encouraged this.

Senator Crippen stated that by having 2 tenants involved in this board's operation, they might realize the real intricacies of running a home. The regulations that are involved and all the stuff that tenants complain about are situations set up by federal law. If the other 5 members realize their power, they can use the tenant members to funnel information to the other

tenants, to develop a better rapport and understanding. To be without some type of representation is a source of irritation.

Senator Pinsoneault stated that in his town they go into agreement with the Tribes for funding the rehabs. So 1 time they deliberately picked a tribal elder in the community and asked him to serve to represent Tribal interests. It was amazing how much he had to offer, and only when you asked him.

Senator Hammond stated that a lot of the people on the advisory board have put in an enormous amount of time to get the project there and they have pride invested and it's hard for them to accept the fact that they wouldn't have the tenants best interests at heart. They raised the point that some tenants are only there a short time, so there is a flux in membership.

Senator Beck stated we have some people unsatisfied with the way the operation is going so they want representation on the board. This signifies displeasure with something and perhaps it is governmental regulations. He thinks people that are already on the board should be kept and the representation added. Is there an ulterior motive with this bill to harass the working board?

Senator Vaughn stated she agrees with Senator Pinsoneault and Senator Crippen. She thinks that with 5 members on there, 2 additional aren't going to be able to stir things up that much and it might help the housing authority to get these problems brought back to the tenants so they can help solve some of these problems. She thinks they serve an excellent purpose being there.

Senator Walker stated that sometime some insignificant thing happens and it snowballs through the complex. So having 2 representatives on the inside they can explain the truths of what is happening. Those members can dispel and defuse those situations.

Senator Pinsoneault said you may get a trouble maker on the board but he soon learns. Senator Walker stated they tend to be tougher on their own people than the people on the board.

Senator Beck stated that present board members are not receptive to the idea.

Chairman Harding stated this has been well discussed. Senator Boylan called for the question. All those in

favor of concurring in HB 682 AS AMENDED say aye. Six senators VOTED yes, DO CONCUR AS AMENDED. Senators Beck, Hammond and Thayer VOTED against HB 682 AS AMENDED. MOTION CARRIED, 6 FOR, 3 AGAINST. Senator Walker will carry HB 682 to the Senate floor.

EXECUTIVE ACTION ON HOUSE BILL 704

Discussion: This is representative Cohen's bill. Connie Erickson stated this bill has to do with zoning districts that were created quite a few years ago and they're trying to put a limit on the amount of time that you can challenge the creation of a district.

Senator Hammond stated that each district will have the same length of time, 5 years, to protest. It's either 5 years from that date of this bill, or 5 years from creation of the district. That's correct. Senator Crippen stated there is a statute of limitations. Senator Hammond says here it's 5 years from the date of this bill.

Senator Walker asked Senator Crippen if this bill encouraged development? Senator Crippen stated it's designed to prevent people from coming in late in the development and telling everyone they're doing things wrong and challenging. Senator Crippen stated as a developer he likes to plan his zoning because it makes a certainty out of uncertainty. He explained that, now, when you create a zoning district there is no time limit to objections and this bill will set a time limit of 5 years.

Recommendation and Vote: Senator Walker MOVED that we DO CONCUR in HB 704.

Senator Hammond stated that in their county there are hearings, and rehearings, this should help some of that. Chairman Harding asked Mona Jamison if she would speak to this bill. Mona Jamison stated that there is still ability to change but after 5 years you won't be able to challenge the district. There are still procedures available to pursue changes. This bill has to do with challenging the zoning of the district as a whole.

Chairman Harding called for the question. All those in FAVOR of CONCURRING IN HB 704 say "AYE". 7 Senators VOTED in FAVOR of HB 704 and Senators Boylan and Hammond VOTED AGAINST. HB 704 carried 7 for, 2 opposed. Senator Walker will carry HB 704 to the Senate floor.

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Local Government, having had under consideration HB 682 (third reading copy -- blue), respectfully report that HB 682 be amended and as so amended be concurred in:

Sponsor: O'Keefe (Walker)

1. Title, line 7.
Strike: "ELECTION"
Insert: "APPOINTMENT"

2. Title, line 9.
Strike: "7-15-4436,"

3. Page 1, line 13 through page 3, line 6.
Strike: sections 1 through 5 in their entirety
Renumber: subsequent sections

4. Page 3, lines 19 and 20.
Following: "~~appoint~~"
Strike: "appointment of five"
Insert: "mayor to appoint seven"
Strike: "and the election of two tenant commissioners"

5. Page 4, line 7.
Following: "~~official.~~"
Strike: the remainder of line 7 through "chairman" on line 9
Insert: "(1) An authority consists of seven commissioners appointed by the mayor, and he shall designate the first chairman. A commissioner may not be a city official"

6. Page 4.
Following: line 9
Insert: "(2) Two of the commissioners must be tenants of the housing authority. One tenant commissioner shall represent family tenants and one tenant commissioner shall represent elderly and handicapped tenants. Nominees for tenant commissioner shall submit to the city clerk a petition signed by not less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater. The city clerk shall submit a list of the tenant nominees to the mayor for appointment to the housing authority. The staff of the housing authority may not involve itself in the nomination or appointment of tenant commissioners."

continued

7. Page 4, line 10.
Following: "~~(2)~~"
Insert: "(3)"

8. Page 4, line 21.
Strike: "elected"
Insert: "appointed"

9. Page 4, line 23.
Strike: "election"
Insert: "appointment"

10. Page 4, line 24.
Strike: "5"
Insert: "2"

11. Page 5, lines 1 through 4.
Strike: "A" on line 1 through "appointed." on line 4

12. Page 5, line 7.
Strike: "[section 21"
Insert: "7-15-4431"

13. Page 5, line 24 through page 6, line 23.
Strike: section 10 in its entirety
Renumber: subsequent sections

14. Page 7, lines 19 through 23.
Strike: section 12 in its entirety

AND AS AMENDED BE CONCURRED IN

Signed: Ethel M. Harding
Ethel M. Harding, Chairman

scrbb682.322

SENATE LOCAL GOVERNMENT
EXHIBIT NO. 1
DATE March 21, 1989
BILL NO. HB682

Amendments to House Bill No. 682
Third Reading Copy

Requested by Senator Walker
For the Senate Committee on Local Government

Prepared by Connie Erickson
March 21, 1989

1. Title, line 7.
Strike: "ELECTION"
Insert: "APPOINTMENT"

2. Page 1, line 13.
Strike: section 1 in its entirety

3. Page 1, line 16.
Strike: section 2 in its entirety

4. Page 1, line 24.
Strike: section 3 in its entirety

5. Page 2, line 16.
Strike: section 4 in its entirety

6. Page 3, line 3.
Strike: section 5 in its entirety
Renumber: subsequent sections

7. Page 3, line 19.
Following: "~~appoint~~"
Insert: "mayor to appoint"
Strike: "appointment of five"
Insert: "seven"
Strike: "and the election of two tenant commissioners"

8. Page 4, line 7.
Following: "~~official.~~"
Strike: the remainder of line 7 through "chairman" on line 9
Insert: "An authority shall consist of seven commissioners appointed by the mayor, and he shall designate the first chairman. A commissioner may not be a city official"

9. Page 4.
Following: line 9
Insert: "(2) Two of the commissioners must be tenants of the housing authority. One tenant commissioner shall represent family tenants and one tenant commissioner shall represent elderly and handicapped tenants. Nominees for tenant commissioner shall submit to the city clerk a petition signed by not less than 25 adult tenants of the authority or 25% of the adult tenants of the authority, whichever is greater. The city clerk shall submit a list of the tenant nominees to the mayor for appointment to the housing authority. The staff of the housing authority may not involve itself in the nomination or appointment of tenant commissioners."

10. Page 4, line 10.
Following: "~~(2)~~"
Insert: "(3)"

11. Page 4, line 21.
Strike: "elected"
Insert: "appointed"

12. Page 4, line 23.
Strike: "election"
Insert: "appointment"

13. Page 4, line 24.
Strike: "5"
Insert: "2"

14. Page 5, lines 1 through 4.
Strike: "A" on line 1 through "appointed" on line 4

15. Page 5, line 24.
Strike: section 10 in its entirety
Renumber: subsequent section

16. Page 7, line 19.
Strike: section 12 in its entirety